

Queen-empress Vs. Nihal Chand

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1898)ILR20All440

Judge : Aikman, J.

Appellant : Queen-empress

Respondent : Nihal Chand

Judgement :

Aikman, J.

1. This is a case reported for the orders of this Court by the learned Sessions Judge of Saharanpur. It appears that two men, Makunda and Chanda, were indebted to one Nihal Chand. In payment of their debt they gave him a promissory note which was not duly stamped. Nihal Chand, it appears, sued in a Civil Court on the promissory note, and there the breach of the stamp law was discovered. The matter having been brought to the notice of the Collector, the prosecution of the makers of the note, as well as of Nihal Chand, was directed. This prosecution resulted in all three being convicted of the offence punishable under Section 61 of the Indian Stamp Act, 1879. The Magistrate sentenced Nihal Chand to a fine of Rs. 35, or in default to 15 days' rigorous imprisonment.

2. As the offence of which Nihal Chand was convicted is an offence punishable with fine only, the imprisonment in default ought to have been simple--see Sections 67 and 34 of the Indian Penal Code. This mistake the Magistrate himself subsequently discovered.

2. The learned Sessions Judge has submitted the case to this Court with a recommendation that the conviction of Nihal Chand should be set aside as illegal. In my opinion the learned Sessions Judge is right. The material part of the section under which Nihal Chand has been convicted runs as follows: 'Any person drawing, making, issuing, endorsing or transferring or signing, otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating any bill of exchange, cheque or promissory note without the same being duly stamped...shall for every such offence be punished with fine which may extend to five hundred rupees.' The Magistrate has apparently looked on the word 'accepting' here as equivalent to 'receiving.' But, as was held in *Queen v. Gulam Hussain Soheb* I.L.R. 7 Mad. 71, 'the term 'accepting' in Section 61 of the Stamp Act does not mean 'receiving,' but 'executing as an acceptor.'" In the case *The Queen v. Nadi Chand Poddar* 24 W.R. C.R. 1, Jackson, J., observed: 'If an instrument called a promissory note or other document of that kind, and as such liable to the duty imposed by the Act, is not duly stamped, it appears to me that the person subject to penalty is the person who makes it, and not the person in whose favour it is made.' That was a prosecution under Section 29 of the Stamp Act then in force, namely, Act No. XVIII of 1869, which does not differ materially from Section 61 of the present Act. It was there held that the person in whose favour a document not duly stamped is made, incurs the risk of being debarred from producing it in evidence, but does not render himself liable to penalties under the fourth chapter of the Act. It has been contended that in such cases a person who receives a document not duly stamped abets the commission of an offence under Section 61; but, as was remarked in the case *Empress v. Janki* I.L.R. 7 Bom. 82, 'it is not abetment of the execution of an unstamped document to receive it, any more than acceptance of stolen property is abetment of theft.' This case was followed in this Court in *Empress v. Gopnl Das* Weekly Notes 1883 p. 145. I think the view taken by the learned Sessions Judge is right. I quash the conviction of Nihal Chand for an

offence under Section 6i of Act No. I of 1879 and the sentence of fine imposed thereunder, and direct that the fine, or such portion of it as may have been paid, be refunded.

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